

Fair Political Practices Commission
MEMORANDUM

To: Chairman Johnson and Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Hyla P. Wagner, Senior Commission Counsel
Scott Hallabrin, General Counsel

Subject: Prenotice Discussion of Amendments to Regulation 18531.61 – Net Debt

Date: September 26, 2007

Proposed Commission Action: Approve for public notice amendments to Regulation 18531.61, governing post-election debt. The two amendments (1) codify existing advice that a committee may raise funds after the election to pay for the costs of a recount, and (2) specify that a committee shall use funds on hand after the election to pay outstanding debt.

Background: Under Government Code Section 85316(a), added by Proposition 34, a candidate may not continue to raise funds after an election, unless the candidate has debts outstanding from the election. Section 85316(a) states:

“(a) Except as provided in subdivision (b) [concerning officeholder accounts], a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.”

The public policy behind this section was to curtail some of fundraising that took place after election night, when contributors representing various interests could see who was elected. Subdivision (b) was added to Section 85316 in 2006 to permit limited post-election fundraising into officeholder accounts.

Reason for and Summary of Amendments: We have made technical, non-substantive drafting changes to the Regulation 18531.61 as part of ongoing efforts to make FPPC regulations easier to understand and use. The two substantive changes are highlighted in bold and underlined.

1. Recounts Included in Net Debt. The first substantive change to the regulation concerns ballot recounts. This issue came to light when election contests and recounts were considered in the context of the legal defense fund regulation. The new language in subparagraph (b)(3)(C) of Regulation 18531.61 states that the legal fees and expenses incurred directly in connection with a ballot recount for an election may be considered part of “net debts outstanding” for the election.

This addition to the regulation codifies current advice in the *Davidian* Advice Letter, No. A-04-061 (attached). That letter concludes that “the cost of legal fees and expenses incurred

directly in connection with the ballot count or recount are integral to the election, and fall within the definition of ‘net debts outstanding from the election’ in section 85316 and regulation 18531.61(d).” Thus a candidate in a close contest with few funds remaining after the election may continue to accept contributions into his campaign account to pay for these expenses of a recount, subject to the contribution limits.

2. Paying Down the Debt. The amendment concerning using funds on hand to pay net debt arose as a suggestion from the Technical Assistance Division and has been on the regulation calendar for over a year. Regulation 18531.61 defines what is considered “net debts outstanding” from an election. In calculating “net debts outstanding” a committee adds up its unpaid debts and obligations, plus the cost of winding down the campaign and fundraising for net debt. The committee then subtracts from this figure its funds on hand available to pay the debts, and any credits, or amounts owed to the committee.

In the net debt calculation, it is implicit that a committee’s “funds on hand” will be used to pay the committee’s outstanding debt. However, the Technical Assistance Division found that some committees were not terminating on time, or were requesting extensions of time to terminate, on the basis that they still needed to raise funds to pay debt. But at the same time these committees were using funds on hand to make contributions to candidates and for other purposes, rather than using the funds to pay their outstanding debt.¹ The change to the regulation proposed in bold in subdivision (d) makes it explicit that a committee must apply funds on hand following an election to the payment of outstanding debt.

The Commission’s authority for this change is found in the fact that Section 85316(a) is a narrow provision that permits a candidate to raise funds after an election only in the limited circumstance where that candidate has debt from the election. Regulation 18531.61 already defines “net debts outstanding” following an election to be reduced by a committee’s funds on hand available to pay those debts. The change merely clarifies that where a committee has debt, its funds on hands following the election actually need to be used to pay the debt within a reasonable timeframe. (We note that the committee will use some funds on hand to raise additional funds to retire the debt, as permitted by the regulation.) This amendment supports the policy of one candidate-controlled committee per election and the termination of that committee following an election, as set forth in the committee termination Regulation 18404.1.

Recommendation: Staff recommends that the Commission approve the amendments to Regulation 18531.61 for public notice.

Attachments: 1 - Amendments to Regulation 18531.61
2 - Government Code Section 85316
3 - Existing Regulations 18531.6 and 18531.61
4 - *Davidian* Advice Letter, No. A-94-061

¹ Some of the Executive Director’s responses to committees’ requests for extensions of time to terminate began including language such as: “Please be aware that Regulation 18404.1 provides more specific criteria governing requests for committee extensions. Primary among these is the requirement to make progress towards debt retirement. I am urging candidates to redouble their efforts at debt repayment and committee termination.”